

## SENATE BILL NO. 157

INTRODUCED BY V. COCCHIARELLA

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ELIGIBILITY FOR TEMPORARY TOTAL DISABILITY BENEFITS; AMENDING SECTIONS 39-71-701 AND 39-71-712, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 39-71-701, MCA, is amended to read:

**"39-71-701. Compensation for temporary total disability -- exception.** (1) Subject to the limitation in 39-71-736 and subsection (4) of this section, a worker is eligible for temporary total disability benefits:

(a) when the worker suffers a total loss of wages as a result of an injury and until the worker reaches maximum healing; or

(b) until the worker has been released to return to the employment in which the worker was engaged at the time of the injury or to employment with similar physical requirements.

(2) The determination of temporary total disability must be supported by a preponderance of objective medical findings.

(3) Weekly compensation benefits for injury producing temporary total disability are 66 2/3% of the wages received at the time of the injury. The maximum weekly compensation benefits may not exceed the state's average weekly wage at the time of injury. Temporary total disability benefits must be paid for the duration of the worker's temporary disability. The weekly benefit amount may not be adjusted for cost of living as provided in 39-71-702(5).

(4) If the treating physician releases a worker to return to the same, a modified, or an alternative position that the individual is able and qualified to perform with the same employer at an equivalent or higher wage than the individual received at the time of injury, the worker is no longer eligible for temporary total disability benefits even though the worker has not reached maximum healing. A worker requalifies for temporary total disability benefits if the modified or alternative position is no longer available ~~for any reason~~ to the worker for any reason except for the worker's incarceration AS PROVIDED FOR IN 39-71-744, retirement, resignation, or termination for disciplinary reasons CAUSED BY A VIOLATION OF THE EMPLOYER'S

1 POLICIES THAT PROVIDE FOR TERMINATION OF EMPLOYMENT and if the worker continues to be temporarily totally  
2 disabled, as defined in 39-71-116.

3 (5) In cases in which it is determined that periodic disability benefits granted by the Social Security  
4 Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not  
5 below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for the  
6 week, which amount is to be calculated from the date of the disability social security entitlement.

7 (6) If the claimant is awarded social security benefits, the insurer may, upon notification of the  
8 claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period  
9 sufficient to recover any resulting overpayment of benefits. This subsection does not prevent a claimant  
10 and insurer from agreeing to a repayment plan.

11 (7) A worker may not receive both wages and temporary total disability benefits without the  
12 written consent of the insurer. A worker who receives both wages and temporary total disability benefits  
13 without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301."

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15 **Section 2.** Section 39-71-712, MCA, is amended to read:

16 **"39-71-712. Temporary partial disability benefits.** (1) If, prior to maximum healing, an injured  
17 worker has a physical restriction and is approved to return to a modified or alternative employment that  
18 the worker is able and qualified to perform and the worker suffers an actual wage loss as a result of a  
19 temporary work restriction, the worker qualifies for temporary partial disability benefits.

20 (2) An insurer's liability for temporary partial disability must be the difference between the injured  
21 worker's average weekly wage received at the time of the injury, subject to a maximum of 40 hours a  
22 week, and the actual weekly wages earned during the period that the claimant is temporarily partially  
23 disabled, not to exceed the injured worker's temporary total disability benefit rate.

24 (3) Temporary partial disability benefits are limited to a total of 26 weeks. The insurer may extend  
25 the period of temporary partial disability payments.

26 (4) A worker is not eligible for temporary partial disability benefits or temporary total disability  
27 benefits if:

28 (a) the worker has been released by the treating physician to return to a modified or alternative  
29 position that the individual is able and qualified to perform with the same employer;

30 (b) the wages payable in the modified or alternative position, when combined with the temporary

1 partial disability benefits, would result in an equivalent or higher wage than the worker received at the time  
2 of injury; and

3 (c) the worker refuses to accept the modified or alternative position. A worker requalifies for  
4 temporary total disability benefits if the modified or alternative position is no longer available to the worker  
5 for any reason except for the worker's incarceration AS PROVIDED FOR IN 39-71-744, retirement, resignation,  
6 or termination for disciplinary reasons CAUSED BY A VIOLATION OF THE EMPLOYER'S POLICIES THAT PROVIDE FOR  
7 TERMINATION OF EMPLOYMENT and if the worker continues to be temporarily totally disabled, as defined in  
8 39-71-116.

9 (5) Temporary partial disability may not be credited against any permanent partial disability award  
10 or settlement under 39-71-703."

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12 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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